



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/283,120	03/31/1999	KEVIN J. WAGONER	AUTOB.059A	9530

20995 7590 01/21/2003

KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

EXAMINER

KAZIMI, HANI M

ART UNIT PAPER NUMBER

3624

DATE MAILED: 01/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/283,120

Applicant(s)

WAGONER ET AL.

Examiner

Hani Kazimi

Art Unit

3624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 September 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) 1-37 and 41-52 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 38-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Art Unit: 3624

DETAILED ACTION

1. This communication is in response to Applicant's amendment filed on September 20, 2002. The rejections are as stated below.

Status of Claims

2. Claims 1-52 are pending in this application, claims 1-37 and 41-52 have been withdrawn from consideration because of the restriction requirement. Therefore, claims 1-52 are under prosecution in this. The Applicant is respectfully required to cancel claims 1-37 and 41-52. The rejections cited are as stated below:

Summary of Office Action

3. Applicants' arguments filed on September 20, 2002 have been fully considered, and discussed in the next section below or within the following rejections under 35 U.S.C. § 102 are not deemed to be persuasive. Therefore, claims 38-40 are rejected as being unpatentable over the art cited below, and Applicant's request for allowance is respectfully denied.

Response to Applicants' Amendment

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

Art Unit: 3624

basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --
(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

5. Claims 38-40 are rejected under 35 U.S.C. 102(e) as being anticipated by Fisher et al. US Pat. No. 5,835,896 as discussed in paragraph 5 of paper No. 9.

Response to Arguments

6. Applicant's arguments filed September 20, 2002 have been fully considered but they are not persuasive.

In the remarks, the Applicant argues in substance that;

Fisher does not disclose "an invention comprising a first bid data, including a first bid and a second bid (second bid being at least as large as the first bid) and a second bid data, including a third bid and a forth bid (fourth bid being at least as large as the third bid)".

7. In response to the above arguments:

The Fisher reference clearly teaches the claimed limitations of the present application. Fisher does teach an auction system comprising "a first bid data, including a first bid and a second bid (second bid being at least as large as the first bid) and a second bid data, including a third bid and a forth bid (fourth bid being at least as large as the third bid)".

According to Applicant's specification page 25, last paragraph through page 26, first

Art Unit: 3624

paragraph, the first bid data contains the first bid which is an initial bid, and the second bid which is a top bid, the second bid data is submitted by a second bidder including an initial bid and a top bid, both bidders are requesting proxy bids with certain increments.

Fisher (figure 3) shows the bid form including a minimum bid (initial bid), bid increment for proxy bids, and a maximum bid (top bid), where the bidder indicates a bid (price not to exceed). Fisher teaches a system for conducting a multi-person, interactive auction (abstract), where more than one bidder is involved, the second bid data is submitted by a second bidder including an initial bid (third bid by a second bidder) and a top bid (fourth bid by the second bidder). Both systems, Fisher and the present invention are using proxy bids. Applicant's invention is using proxy bids that are utilized by both the seller and the buyer. However, the claims do not indicate who is submitting the bids. The invention is broadly claimed, and the cited reference meet the scope of the claimed limitations.

Conclusion

8. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

Art Unit: 3624

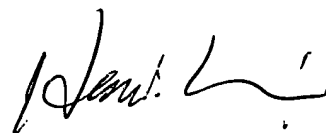
CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hani Kazimi whose telephone number is (703) 305-1061. The examiner can normally be reached Monday-Friday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached at (703) 308-1065.

The fax number for Formal or Official faxes and Draft or Informal faxes to Technology Center 3600 or this Art Unit is (703) 305-7687 or 7658.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1113 or 1114.


HANI M. KAZIMI
PRIMARY EXAMINER
Art Unit 3624

December 27, 2002